FILE COPY

MAR 27 1936

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 859

C. L. ASHTON ET AL.,

Petitioners,

vs.

CAMERON COUNTY WATER IMPROVEMENT DISTRICT No. ONE.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

PALMER HUTCHESON,
Houston, Texas,
J. W. TERRY,
Galveston, Texas;
W. P. HAMBLEN,
Houston, Texas,
Attorneys for Petitioners.

BAKER, BOTTS, ANDREWS & WHARTON,
Houston, Texas;
TERRY, CAVIN & MILLS,
Galveston, Texas,
Of Counsel.

INDEX.

SUBJECT INDEX.

	Page
Petition for writ of certiorari:	
Summary statement of the matter involved	2
Reasons relied upon for the allowance of the writ	6
Prayer for writ	10
Brief in support of petition for writ of certiorari	13
The opinions of the courts below	13
Jurisdiction	14
Statement of the case (see summary statement of the matters involved	14
Specification of errors	15
Summary of the argument	17
Argument	18
Point A.—Conflict with decisions of this honorable Court	18
Point B.—Invasion of State's rights reserved under Tenth Amendment	23
Point C.—Lack of geographical uniformity in the application of the Municipal Bankruptcy Act	30
Point D.—State legislation, giving consent to the application of the Municipal Bankruptcy Act, would impair the obligation of contracts contrary to Section X of Article I of the Federal Constitution and Section XVI of Article I of the Texas Constitution	35
Point E.—The Municipal Bankruptcy Act violates the Fifth Amendment to the Federal Constitution	40
Point F.—The petition revealed that the plan of adjustment was dependent upon a loan to the District by the Reconstruction Finance Corporation under conditions, imposed by Section 36 of the Agricultural Adjustment Act, and by the loan contract, which invaded the Exercise of governmental powers of the district	46
Conclusion	50
Appendix:	
Municipal Bankruptcy Act of May 24, 1934	53
Title 43, Chap. 403, United States Code	61
Article III, Section 52, Texas Constitution	63
Article XVI, Section 59a, Texas Constitution	64
Chap. 107, Acts of Forty-Fourth Legislature of Texas	66
Texas revised Civil Statutes, 1925	67
Article 7622	67
Article 7675	67

Page

Article 7703 68
Article 7706 68
Article 7712 69

TABLE OF CASES.

Anderson County Road District No. Eight v. Pollard, 116 Texas 547. 26
Arkansas-Missouri Power Co. v. City of Kennett, 78 F. (2d) 911.... 10, 49
Bowers v. City of Taylor, 16 S. W. (2d) 520, 24 S. W. (2d) 816..... 10, 49
Buffington v. Day, 11 Wall. 113 ..... 8, 26
Callaghan v. Reconstruction Finance Corporation (United States Supreme Court, March 2, 1936)..... 14
Cattle Raisers Loan Co. v. Doan, 86 S. W. (2d) 252, and 1082..... 9, 39
Clark v. Barnard, 108 U. S. 447 29
Continental Illinois National Bank & Trust Company v. Chicago, Rock Island & Pacific Railway Company, 294 U. S. 648..... 14, 42
Fallbrook Irrigation District v. Bradley, 164 U. S. 112..... 8, 24, 25
Florida v. Mellon, 273 U. S. 12..... 7, 34
Greenwood County v. Duke Power Co. 21
Gunn v. Barry, 82 U. S. 610 ..... 9, 32
Head Money Cases, 112 U. S. 580 32
Hester and Roberts v. Donna Irrigation District, Hidalgo County No. 1, 239 S. W. 992..... 24
Hidalgo County et al. v. Morey, 74 F. (2d) 101..... 9, 24, 40
Home Building & Loan Assn. v. Blaisdell, 290 U. S. 398..... 38
Hopkins Federal Savings & Loan Assn. et al. v. Cleary, 296 U. S. 315 ..... 7, 19
Houck v. Little River Drainage District, 239 U. S. 254..... 8, 25
International Shoe Company v. Pinkus, 278 U. S. 261..... 7, 31
In re Dillard, 7 Fed. Cases, 912..... 9, 32
In re Rahrer, 140 U. S. 545 (Rahrer v. Wilkerson)..... 36
In re Slaughter, 12 Fed. Supp. 206..... 33
In re Tennessee Publishing Company, decided Feb. 13, 1936..... 45
In re Tschoepe, decided Feb 1, 1936..... 33
In re Young, 12 Fed. Supp. 30 33
Jones v. Williams, Tax Collector, 121 Texas 94..... 8
Lane County v. Oregon, 7 Wallace 71 ..... 8, 25
Los Angeles County v. Rockhold, 44 Pac. (2d) 340..... 41
Louisville Joint Stock Land Bank v. Radford, 295 U. S. 555..... 7, 14, 23
Meriwether v. Garrett, 102 U. S. 472 ..... 8, 25
Missouri Public Service Co. v. City of Concordia, 8 Fed. Supp. 1.... 10, 50
Ogden v. Saunders, 12 Wheat 213 9
O'Neill v. Leamer, 239 U. S. 244 ..... 8, 25
Parker v. El Paso Water Improvement District No. 1, 116 Texas 631 ..... 8, 24
Pollock v. Farmers Loan & Trust Company, 157 U. S. 429 (158 U. S. 601, on rehearing) 8, 26

Page

Pryor et al. Commissioners Sabougla Drainage District v. Goza, 159 So. (Miss.) 99 ..... 9, 39
Robbins v. Limestone County, 114 Texas 345 ..... 8, 26
Rorick v. Commissioners of Everglades Drainage District, 57 F. (2d) 1048 ..... 25, 41
Struges v. Crowninshield, 12 Wheat. 257 38
Texas & Pacific Railway Company v. Ward County Irrigation District No. 1, 112 Texas 593 ..... 8, 23
Tom Green County v. Moody, Attorney General, 116 Texas 299 ..... 8, 26
Travelers Insurance Company v. Marshall, 124 Texas 45 ..... 9, 38
United States v. B. & O. R. R. Co., 17 Wall. 322 ..... 8, 27
United States of American v. Butler, Receiver of Hoosac Mills Corp., 56 Sup. Ct. Rep. 312 ..... 7, 20
United States v. Constantine, 296 U. S. 287 ..... 7, 21
Village of Kent v. United States, 113 Fed. 232 27
Von Hoffman v. City of Quincy, 4 Wallace 535 24
Voorhies v. City of Houston, 70 Texas 331 ..... 9, 24, 40
Willcuts, Collector, v. Bunn, 282 U. S. 216 27
Worthen Company v. Kavanaugh, 295 U. S. 56 9
Worthen Company v. Thomas, 292 U. S. 426 9

OTHER AUTHORITIES CITED.

Federal Statutes:

Municipal Bankruptcy Act of May 24, 1934 .....
(Sections 301-303, Title 11, United States Code) 2, 14, 18, 31-50
Section 36, Agricultural Adjustment Act of 1933 (Section 403, Title 43, United States Code) 6, 18, 46, 47
Judicial Code, Section 240, as amended (United States Code, Title 28, Section 347) 14

Constitution of the United States:

Section VIII, Article I 4, 15, 17, 26
Section X, Article I 5, 16, 17, 36
Amendment V 4, 18
Amendment X 4, 15, 17
Amendment XI 29

Texas Statutes:

Chap. 107, 44th Legislature, Regular Session, 1935 (Article 1024a, Vernon's Annotted Texas Civil Statutes, 1935) 17, 38
Articles 7622-7807, Revised Civil Statutes of Texas, 1925 (Water Improvement Districts) 23
Articles 5012-5107, Revised Civil Statutes of Texas, 1911 (Irrigation Districts) (amended 1913, Ch. 172, 33d Leg.; 1917 Ch. 87, 35th Leg.) 23
Articles 7703-7706, Revised Civil Statutes of Texas, 1925 24
Articles 7712 and 7675, Revised Civil Statutes of Texas, 1925 .. 26, 40

Page

Constitution of the State of Texas:
Section 52, Article III 40
Section 59a, Article XVI 23
Section XVI, Article I 16, 17
Section 15, Article VIII 40

Textbooks, etc.:
Honnold on "Supreme Court Law", Vol. II, page 840 44
Opinion of Special Assistant Attorney General Weston re Municipal Bankruptcy Act 35, 36

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 859

C. L. ASHTON ET AL.,

Petitioners,

vs.

CAMERON COUNTY WATER IMPROVEMENT DISTRICT No. ONE.

PETITION FOR WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

Petitioners are C. L. Ashton of Harris County, Texas; West Coast Life Insurance Company, C. W. Griffin, A. G. Griffin and Leonard E. Wood, all of San Francisco, California, and J. W. Terry of Galveston, Texas, individually and as trustee for Rebecca Terry White. Petitioners were appellees in the Circuit Court of Appeals and were successful contestants in the United States District Court of a proceeding instituted by Cameron County Water Improvement District No. One (of Texas) to have a plan of readjustment of its bonded indebtedness made effective under Chapter Nine, which was added to the National Bankruptcy Act by the Act of May 24, 1934 (commonly known as the Sumners-Wilcox Act or the Municipal Bankruptcy Act).

Petitioners applying for writ of certiorari herein respectfully show this Honorable Court:

I.

Summary Statement of the Matter Involved.

The primary question to be determined in this case is whether the so-called Municipal Bankruptcy Act is constitutional. The United States District Court for the Southern District of Texas held the Act unconstitutional as applied to this type of District (9th Fed. Supp. 103), but the United States Circuit Court of Appeals for the Fifth Circuit held the Act constitutional on appeal from said judgment. No other Circuit Court of Appeals has passed on this Act, and the question has not heretofore been presented to this Honorable Court.

Respondent instituted this suit seeking approval of a plan of readjustment which was to be financed by Reconstruction Finance Corporation. The proceeding was instituted under the provisions of Chapter Nine added to the National Bankruptcy Act of 1898 by the Act of May 24, 1934 (Chapter 345, 48 Statutes, page 798; Sections 301, 302, and 303, Title 11, United States Code). This Act was entitled "Provisions for the Emergency Temporary Aid of Insolvent Public Debtors and to Preserve the Assets Thereof, and for Other Related Purposes." The respondent sought by this proceeding to compel the holders of its bonds (including these petitioners) to accept 49.8% of the par value of their bonds in full satisfaction, thus relieving the District of its duty to levy and collect taxes to discharge the full amount owing on its bonds, and thus relieving the taxpayers of the District to this extent of their obligations as taxpayers.

The District is a political or governmental subdivision of the sovereign State of Texas. Its organization and func-

tions are provided for by the Constitution of the State of Texas, as well as by the State statutes. Section 52, Article III, of the Constitution of the State of Texas, adopted as an amendment in 1904, provides for "internal improvements", and specifies that such a political subdivision "may issue bonds or otherwise lend its credit in any amount not to exceed one-fourth of the assessed valuation of the real property of such District or territory * * * and levy and collect such taxes to pay the interest thereon and provide a sinking fund for the redemption thereof as the Legislature may authorize."

Section 59a of Article XVI of the Constitution of the State of Texas, adopted as an amendment in 1917, provides for the "conservation of natural resources" and specifies that irrigation and other similar measures looking to "the preservation and conservation of all such natural resources of the State are each and all hereby declared public rights and duties; and the Legislature shall pass all such laws as may be appropriate thereto".

Legislation was passed in pursuance of these constitutional provisions—Articles 7622-7807, Revised Civil Statutes of Texas, 1925, "Water Improvement Districts"; Articles 5012-5107, Revised Civil Statutes of Texas, 1911, "Irrigation Districts". (Amended—1913 Ch. 172, 33d Leg.; 1917 Ch. 87, 35th Leg.)

This District was originally organized in 1914 as Cameron County Irrigation District No. One, and certain bonds involved in the plan of readjustment were then issued by the District in that name. Later, in 1919, the District was converted into Cameron County Water Improvement District No. One, and other bonds involved in the plan of readjustment were then issued in that name. Bonds of the District aggregating approximately $800,000 are outstanding. (Paragraph IV, of plaintiff's first amended petition, R. 5.)

Your petitioners, holding $78,500 of the bonds, more than 5%, in amount of par value of the bonds of the District outstanding at the time the proceeding was instituted by the District, as authorized by the Act, filed a contest and motion to dismiss (R. 103) and also, as authorized by the Act, obtained leave to intervene (R. 53), and adopted as the basis of their intervention the matters set forth in the contest and motion to dismiss. The court sustained the motion to dismiss on the ground that the Act, as applied to this type of District, was unconstitutional (R. 113).

Your petitioners in their contest and motion to dismiss advanced among others the following grounds (R. 104, 105 and 106):

(a) That the Act was not within the scope of subdivision (4) of Section VIII of Article I of the Constitution of the United States, providing that Congress might pass "uniform laws upon the subject of bankruptcies throughout the United States".

(b) That the Act violated the Fifth Amendment to the Constitution of the United States, and deprived the contestants of their property without due process of law.

(c) That the Act violated the Tenth Amendment to the Constitution of the United States, providing that powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, because the Act attempted to extend the bankruptcy powers of the National Government to political subdivisions of a State, except in instances where the State passed legislation prohibiting same, or where the political subdivision failed to obtain the consent of a State fiscal agency, if one existed in the State having control of such political subdivision.

(d) That the Act violated Section X of Article I of the Constitution of the United States, prohibiting any State from passing any law impairing the obligation of contracts (*either with or without the consent of Congress*) by attempting to permit the States to authorize their political subdivisions to take advantage of the bankruptcy act and thereby to discharge the obligation of contracts entered into pursuant to the Constitution and laws of the States.

(e) That the Act of the Legislature of the State of Texas (Chapter 107, 44th Legislature, Regular Session, 1935; Article 1024a, Vernon's Annotated Texas Civil Statutes, 1935) seeking to specifically authorize its political subdivisions to take advantage of the Municipal Bankruptcy Act violated Section X of Article I of the Constitution of the United States as aforesaid, and also violated Section XVI of Article I of the Constitution of the State of Texas.

(f) That the plan of readjustment tendered by the District for approval showed on its face that it was not one under which, even if confirmed, the District court "take all action necessary to carry out the plan", because it contemplated the loaning of funds by the Reconstruction Finance Corporation (a governmental agency disbursing Federal funds), for use in aid of a purely intrastate project and a matter of purely State or local concern and not national in its scope; such a loan not being within the powers delegated to Congress by the "general welfare" clause of the Constitution, though purported to be authorized by certain provisions of the Agricultural Adjustment Act, to-wit: Section 36 (Title II, Part Four) thereof, captioned as follows: "Refinancing of Agricultural Improvement District Indebtedness for the Benefit of Farm-

ers. Loans by Reconstruction Finance Corporation.'' Section 403, Title 43, United States Code.)

An appeal was taken from the judgment of the United States District Court, which held the Municipal Bankruptcy Act was unconstitutional and dismissed the plaintiff's petition for want of jurisdiction; and the case was submitted in the United States Circuit Court of Appeals for the Fifth Circuit on November 4, 1935. On January 21, 1936, no decision having been rendered by the Circuit Court of Appeals at that time, all parties to the appeal caused to be filed a joint petition requesting the Circuit Court of Appeals to certify the constitutional questions involved to this Honorable Court (R. 140). However, the petition was not granted and on March 3, 1936 the court filed its opinion and rendered its judgment herein reversing the judgment of the United States District Court and holding the Municipal Bankruptcy Act constitutional (R. 144-151).

II.

Reasons Relied Upon for the Allowance of the Writ.

(a) The Circuit Court of Appeals has decided an important question of Federal law which has not been, but should be settled by this Court—whether the Municipal Bankruptcy Act is constitutional. Numerous cases involving this question are now pending and the question should be determined by the highest court of the land as soon as possible.

(b) The Circuit Court of Appeals has decided a Federal question in a way probably in conflict with applicable decisions of this Court, because the Circuit Court has decided that the Municipal Bankruptcy Act does not infringe States' rights as reserved under the Tenth Amendment. Among the decisions of this Honorable Court which are re-

lied upon by your petitioners as conflicting with the decision of the Circuit Court of Appeals in this respect are:

Hopkins Federal Savings & Loan Assn. et al. v. *Cleary*, 296 U. S. 315 (1935);

United States v. *Constantine*, 296 U. S. 287 (1935);

United States of America v. *Butler, Receiver of Hoosac Mills Corp.*, 56 Sup. Ct. Rep. 312, — U. S. — (1936).

These cases, of course, do not deal with bankruptcy legislation, but do deal with "State rights" and the principles established thereby are, it is believed, determinative of this case.

(c) The Circuit Court of Appeals has decided a Federal question in a way probably in conflict with applicable decisions of this Court because the Circuit Court has held the Municipal Bankruptcy Act to be valid under subdivision (4), Section VIII, Article I, of the Constitution of the United States, authorizing Congress to pass "uniform laws on the subject of bankruptcies throughout the United States." Petitioners contend that the Act does not meet the requirements of that clause of the Constitution, is not uniform in is application, and violates the Fifth Amendment to the Constitution. Among the decisions of this Honorable Court which are relied upon by your petitioners as conflicting with the decision of the Circuit Court of Appeals in this respect are:

Louisville Joint Stock Land Bank v. *Radford*, 295 U. S. 555 (1935);

International Shoe Company v. *Pinkus*, 278 U. S. 261 (1929);

Florida v. *Mellon*, 273 U. S. 12 (1927);

(d) The Circuit Court of Appeals has decided an important question of general law in a way probably untenable and in conflict with the weight of authority, because the

Circuit Court disregarded the rule that the Federal Government cannot interfere directly or indirectly with state agencies either by taxation or otherwise, and that a District of the type here involved is a governmental body of the State and that the taxing power is a governmental function. In addition to the cases cited under the preceding grounds, the decision of the Circuit Court of Appeals in this case is contrary in principle to the decisions of this Honorable Court and the Supreme Court of Texas, in the following cases:

Supreme Court of the United States.

Buffington v. *Day*, 11 Wall. 113 (1870);
Fallbrook Irrigation District v. *Bradley*, 164 U. S. 112 (1896);
Houck v. *Little River Drainage District*, 239 U. S. 254 (1915);
Lane County v. *Oregon*, 7 Wallace 71 (1868);
Meriwether v. *Garrett*, 102 U. S. 472 (1880);
O'Neill v. *Leamer*, 239 U. S. 244 (1915);
Pollock v. *Farmers Loan & Trust Company*, 157 U. S. 429; (158 U. S. 601, on rehearing.) (1895);
United States v. *B. & O. R. R. Co.*, 17 Wall. 322 (1872).

Supreme Court of Texas.

Parker v. *El Paso Water Improvement District No. 1*, 116 Texas 631 (1927);
Jones v. *Williams, Tax Collector*, 121 Texas 94 (1931);
Robbins v. *Limestone County*, 114 Texas 345 (1925);
Texas & Pacific Railway Company v. *Ward County Irrigation District No. 1*, 112 Texas 593 (1923);
Tom Green County v. *Moody, Attorney General*, 116 Texas 299 (1926).

(e) The Circuit Court of Appeals has decided a question of constitutional law in a way that conflicts with decisions of this Honorable Court and of the Supreme Court of Texas, and of other courts, relating to the Federal and State constitutional provisions prohibiting the passage by the State of laws impairing the obligation of contracts, because the Circuit Court held that a statute passed by the State gave the bankruptcy court "jurisdiction over this proceeding" which would not exist over the State's opposition. Among the cases conflicting with the Circuit Court's decision in this respect are the following:

Gunn v. *Barry*, 82 U. S. 610 (1872);
Ogden v. *Saunders*, 12 Wheat. 213 (1827);
Worthen Company v. *Thomas*, 292 U. S. 426 (1934);
Worthen Company v. *Kavanaugh*, 295 U. S. 56 (1935);
In re Dillard, 7 Fed. Cases, 3912 (1873);
Travelers Insurance Company v. *Marshall*, 124 Texas 45 (1934);
Cattle Raisers Loan Co. v. *Doan*, 86 S. W. (2d) 252, and 1082 (Texas 1935);
Pryor et al., Commissioners Sabougla Drainage District v. *Goza*, 159 So. (Miss.) 99 (1935).

(f) The Circuit Court of Appeals has decided an important question of local law, dealing with the powers and duties of political or governmental subdivisions of the State of Texas with relation to taxation and contract obligations in a way probably in conflict with applicable local decisions.

The decision of the Circuit Court of Appeals is contrary in principle to the following decisions which recognize that the duty of political subdivisions of Texas to collect taxes to pay their bonds and other obligations may be enforced by mandamus:

Voorhies v. *City of Houston*, 70 Texas 331 (1888);
Hidalgo County v. *Morey*, 74 F. (2d) 101 (1934).

(g) The Circuit Court of Appeals has decided a question involving Federal law and local law in a way that conflicts with both, and with decisions of the courts relating thereto, in that the Circuit Court failed to hold that the District's amended petition showed on its face that the plan of readjustment was one that could not lawfully be consummated because it was dependent upon the making of a loan of Federal funds by Reconstruction Finance Corporation to the District with conditions that impaired state sovereignty and exceeded Federal powers. Among the cases conflicting in principle with the decision of the Circuit Court are the following:

Arkansas-Missouri Power Co. v. *City of Kennett*, 78 F. (2d) 911 (1935);

Missouri Public Service Co. v. *City of Concordia*, 8 Fed. Supp. 1 (1934);

Bowers v. *City of Taylor*, 16 S. W. (2d) 520; 24 S. W. (2d) 816 (1929-1930). (Opinion of Texas Commission of Appeals adopted by Supreme Court of Texas.)

Wherefore your petitioners respectfully pray that a writ of certiorari issue under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding that Court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and of proceedings in the case numbered and entitled on its docket No. 7830, Cameron County Water Improvement District No. 1, Appellant, vs. C. L. Ashton et als., Appellees, and that the said judgment of the Circuit Court of Appeals be reversed by this Honorable Court and the decree of the District Court be affirmed and

that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

C. L. ASHTON,
West Coast Life Insurance Company;
C. W. GRIFFIN,
A. G. GRIFFIN,
LEONARD E. WOOD,
J. W. TERRY,
Individually and as Trustee for Rebecca Terry White;
By PALMER HUTCHESON,
J. W. TERRY,
W. P. HAMBLEN,
Counsel for Petitioners.

March, 1936.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 859

C. L. ASHTON ET AL.,

Petitioners,

vs.

CAMERON COUNTY WATER IMPROVEMENT DISTRICT No. ONE.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

The Opinions of the Courts Below.

The opinion of the United States District Court for the Southern District of Texas is reported in 9 Fed. Supp. 103. The opinion of the United States Circuit Court of Appeals for the Fifth Circuit has not yet been printed in the official reports, but the opinion of that court appears at page 144 *et seq.* of the printed record in this case. The opinion of the Fifth Circuit Court of Appeals was rendered on March 3, 1936, and was written by Circuit Judge Foster, who sat in the case with Circuit Judge Sibley, and District Judge Dawkins.

II.

Jurisdiction.

1. Jurisdiction of this cause is conferred upon this Honorable Court by Judicial Code, Section 240, as amended, which appears as United States Code, Title 28, Section 347; and also by Chap. 345, 48 Stat. page 798, Act of May 24, 1934.

2. The date of the decree of the Circuit Court of Appeals in this case was March 3, 1936 (R. 151). No petition for rehearing was filed, on account of the limited time intervening before the Act expires by its terms, on May 24, 1936.

3. The Circuit Court of Appeals reversed the judgment of the United States District Court. The District Court had dismissed the proceeding instituted by the plaintiff for want of jurisdiction, thereby making a final disposition of the case subject to the appeal (R. 125).

4. The power of this Honorable Court to review this type of case on petition for certiorari is sustained by the following, among other, cases:

Louisville Joint Stock Land Bank v. *Radford,* 295 U. S. 555;

Continental Illinois National Bank & Trust Company v. *Chicago, Rock Island & Pacific Railway Company,* 294 U. S. 648;

Callaghan v. *Reconstruction Finance Corporation* (United States Supreme Court, March 2, 1936.)

III.

Statement of the Case.

A full statement of the case has been given under heading I of the petition, and in the interest of brevity the statement is not repeated at this point.

IV.

Specification of Errors.

Petitioners will rely upon the following specification of errors:

1. The Circuit Court of Appeals erred in reversing the judgment of the United States District Court, which dismissed the proceeding instituted by the District under the Act of May 24, 1934, for want of jurisdiction, and which held that Act to be unconstitutional, as applied to such a District.

2. The Circuit Court of Appeals erred in holding that the Act of May 24, 1934, was constitutional.

3. The Circuit Court of Appeals erred in holding that the Act of May 24, 1934, was within the scope of subdivision (4) of Section VIII of Article I of the Constitution of the United States providing that Congress shall have the power to establish uniform laws upon the subject of bankruptcies throughout the United States.

4. The Circuit Court of Appeals erred in not holding that the Act of May 24, 1934, failed to meet the constitutional requirement of uniformity, since its operation was dependent for its application on the will of the State of which the political subdivision is a part.

5. The Circuit Court of Appeals erred in not holding that the Act of May 24, 1934, was unconstitutional because it attempted to deal with political subdivisions, control over which was reserved to the states by the Tenth Amendment, and could only be delegated to the United States by constitutional amendment duly adopted instead of by mere consent or acquiescence of any one State.

6. The Circuit Court of Appeals erred in not holding that the Act of May 24, 1934, was unconstitutional because

the Act attempted to authorize any State to impair the obligation of the contracts of its political subdivisions in violation of subdivision (1) of Section X of Article I of the Constitution, by permitting the application of the Bankruptcy Act to its political subdivisions.

7. The Circuit Court of Appeals erred in not holding that since "if the State chooses to exercise her sovereign authority, she has the right to do so and the Act is without effect," the Act of the Legislature of Texas, combined with the Act of Congress to bring about an impairment of the obligation of contracts of the State's political subdivisions, in violation of subdivision (1) of Section X of Article I of the Constitution, and in violation of Section XVI of Article I of the Constitution of Texas.

8. The Circuit Court of Appeals erred in not holding that the Act of May 24, 1934, was unconstitutional because it attempted to make its application dependent upon the will of a State in which a political subdivision invoking the Act is located, thus destroying the uniformity of the Act as a National Bankruptcy Act, and in attempting to extend its application into the domain of the powers reserved to a State, by mere acquiescence of a State, rather than by amendment of the Federal Constitution in the manner provided by Article V thereof.

9. The Circuit Court of Appeals erred in not holding that the plan of readjustment tendered showed on its face that it was not one under which even if confirmed, the District could "take all action necessary to carry out the plan", because it contemplated the loaning of funds by the Reconstruction Finance Corporation, for use in aid of a purely intrastate project of local and not national concern. Such a loan not being within the powers delegated to Congress by the "general welfare" clause of the Constitution, and

being conditioned on the exercise of control by the Reconstruction Finance Corporation over the political subdivision to such an extent as to invade the sovereign rights of the State.

V.

Summary of the Argument.

POINT A.

The decision of the Circuit Court of Appeals is contrary to prior decisions of this Honorable Court.

POINT B.

The Act of May 24, 1934, violates the Tenth Amendment of the Federal Constitution which provides that powers not delegated to the United States by the Constitution, nor prohibited to it by the states, are reserved to the states.

POINT C.

The Act of May 24, 1934, is not such a uniform law on the subject of bankruptcies throughout the United States as is authorized by subdivision (4), Section VIII, Article I of the Federal Constitution.

POINT D.

The Act of May 24, 1934, and the statute passed by the State of Texas in pursuance thereof (Chap. 107, 44th Legislature) constitute a violation of subdivision (1) of Section X of Article I of the Federal Constitution, and Section XVI of Article I of the State Constitution, which inhibit the passage by the State of a law impairing the obligation of contracts, either with or without the consent of the Congress.

POINT E.

The Act of May 24, 1934, is violative of the Fifth Amendment to the Federal Constitution because its effect is to deprive these bondholders of their property without due process of law.

POINT F.

The plan of readjustment tendered by the District in its petition showed on its face that the District could not "take all action necessary to carry out the plan," as required by the Muncipal Bankruptcy Act, because under the terms of Title II, Section 36, of the Agricultural Adjustment Act known as the Emergency Farm Mortgage Act of 1933, and authorizing loans by the Reconstruction Finance Corporation in "refinancing of agricultural improvement district indebtedness for the benefit of farmers," the loan to be made by the Reconstruction Finance Corporation was conditioned upon the exercise of control by the Reconstruction Finance Corporation over the governmental powers of the District in a manner that would invade the sovereignty of the State, and the making of such a loan of federal funds was beyond the power of Congress to authorize.

ARGUMENT.

(Italics are ours unless otherwise indicated.)

POINT A.

Conflict with Decisions of this Honorable Court.

The Act of May 24, 1934, conflicts with decisions of this Honorable Court in several respects.

There are three recent decisions of the Supreme Court of the United States which are vitally important in determin-

ing the limitations and extensions of the powers of Congress to enact legislation dealing with either organizations or fields of activity that are subject to state legislation.

The case of *Hopkins Federal Savings & Loan Association* v. *Cleary*, 296 U. S. 315, in which Mr. Justice Cardozo wrote the opinion of the Supreme Court, gave full recognition to the principle that federal legislation could not, over the objection of the State of Wisconsin, authorize quasi public corporations, chartered by that State as State building and loan associations, to convert their organizations into federal savings and loan associations under the Home Owners' Loan Act of 1933. In that case the Court discussed the fact that the power of Congress over the creation and operation of such a quasi public corporation was certainly not exclusive, and said:

> "No one would say with reference to the business conducted by these petitioners, that Congress could prohibit the formation or continuance of such associations by the states, whatever may be its power to charter them itself. * * * The power of Congress in the premises, if there is any, being not exclusive, but at most concurrent, and the untrammeled coexistence of federal and state associations being a conceded possibility, we are constrained to the holding that *there has been an illegitimate encroachment by the government of the Nation upon a domain of activity set apart by the Constitution as the province of the states.*"

It is true that in that case the Court did not pass on what would have been the effect if the State of Wisconsin had not protested against the attempted conversion of the associations. However, it is pointed out that there was no statute passed by the Legislature of the State of Wisconsin for the purpose of preventing the application of the federal act to associations chartered by that State, and yet the Court treated the protest of the Banking Commission of

that State as sufficient to prevent the application of the Act, and further said:

> "If nonassenting shareholders or creditors were parties to these suits, the question would be urgent whether property interests may be so transformed consistently with the restraints of the Fifth Amendment. * * * Shareholders and creditors being absent, we have instead the question whether *consistently with the Tenth Amendment* the change may be made under license of the central government against the protest of the State."

In the case of *United States* v. *Butler*, 56 Sup. Ct. Rep. 312, opinion in which was written by Mr. Justice Roberts, the Court in passing upon the constitutionality of the Agricultural Adjustment Act, gave consideration to whether the plan of operation outlined by the Act was compulsory or merely voluntary in its nature, and in that connection had occasion to pass on what would be the effect of an objection by a state to the application of the Act to its citizens. The Court on this subject said:

> "But it is said that there is a wide difference in another respect, between compulsory regulation of the local affairs of a state's citizens and the mere making of a contract relating to their conduct; *that, if any state objects, it may declare the contract void and thus prevent those under the state's jurisdiction from complying with its terms.* The argument is plainly fallacious. The United States can make the contract only if the federal power to tax and to appropriate reaches the subject matter of the contract. If this does reach the subject matter, its exertion can not be displaced by state action. To say otherwise is to deny the supremacy of the laws of the United States; to make them subordinate to those of a state. This would reverse the cardinal principle embodied in the constitu-

> tion and substitute one which declares that congress may only effectively legislate as to matters within federal competence when the states do not dissent."

(The foregoing language is quoted in the dissenting opinion of Judge Soper in the very recent case of *Greenwood County* v. *Duke Power Co.*, decided by the United States Circuit Court of Appeals for the Fourth Circuit, with this accompanying statement: "The party to the present contract with the government is not a private citizen, but a municipality or agency of the state which consents to the invasion of the state's domain; but, it is submitted that the state no more than the individual may be induced by gift to break down the barriers which confine the Federal Government within constitutional limits.")

The preceding quotation from the case of *United States* v. *Butler* forces the conclusion either that the power of the Federal Government to pass bankruptcy laws applicable to political subdivisions of states is supreme (so that state acquiescence or objection is immaterial), or else that the power cannot reach the subject at all, even with affirmative action of any one state. Here the Court was dealing with the power of taxation, which is certainly a fundamental power of the national government and certainly equal in importance to any other power conferred by the Federal Constitution, but the power to levy and collect an excise tax such as it was contended that the Agricultural Adjustment Act contemplated is subject to the requirement of geographical uniformity just as is the power to pass bankruptcy legislation.

In the case of *United States* v. *Constantine*, 296 U. S. 287, this Honorable Court determined that failure to pay a so-called excise tax of $1,000 imposed by Section 701 of the Revenue Act of 1926 upon retail dealers of malt liquor conducting their businesses in any State or place having